

BILL NO. S-74-05-44

SPECIAL ORDINANCE NO. S- 86-74

AN ORDINANCE approving an Agreement with  
INDIANA VILLA CAPRI for sanitary sewer.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT  
WAYNE, INDIANA:

SECTION 1. The agreement between INDIANA VILLA CAPRI and the  
City of Fort Wayne, by and through its Mayor and the Board of Public Works,  
for the construction of a sanitary sewer, as follows:

A 8 inch sanitary sewer beginning at an existing sanitary  
manhole 5<sup>±</sup> lineal feet west of and 5<sup>±</sup> lineal feet south of the  
southwest corner of Lot 12 South Dellwood Park; thence  
easterly 710<sup>±</sup> lineal feet, terminating at a proposed manhole  
located 5<sup>±</sup> lineal feet east of and 5<sup>±</sup> lineal feet south of the  
southeast corner of Lot 20 of said South Dellwood Park.

for no cost to the City for sewer construction and future sewage charges will be  
paid to the City, all as more particularly set forth in said Agreement, which is  
on file in the Office of the Board of Works, and is by reference incorporated herein  
and made a part hereof, is hereby in all things ratified, confirmed and approved.

SECTION 2. This Ordinance shall be in full force and effect from and  
after its passage and approval by the Mayor.

*Winfield C. Moore Jr.*

APPROVED AS TO FORM  
AND LEGALITY,

*W. B. [Signature]*  
CITY ATTORNEY

Read the first time in full and on motion by Moses, seconded by Shiga, and duly adopted, read the second time by title and referred to the Committee on Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_, at \_\_\_\_\_ o'clock P.M., E.S.T.

Date: 5-28-74

Charles W. Wolschman  
CITY CLERK

Read the third time in full and on motion by Moses, seconded by Shiga, and duly adopted, placed on its passage. Passed (~~lost~~) by the following vote:

	AYES <u>9</u>	NAYS <u>0</u>	ABSTAINED _____	ABSENT _____ to-wit:
BURNS	<u>X</u>	_____	_____	_____
HINGA	<u>X</u>	_____	_____	_____
KRAUS	<u>X</u>	_____	_____	_____
MOSES	<u>X</u>	_____	_____	_____
NUCKOLS	<u>X</u>	_____	_____	_____
SCHMIDT, D.	<u>X</u>	_____	_____	_____
SCHMIDT, V.	<u>X</u>	_____	_____	_____
STIER	<u>X</u>	_____	_____	_____
TALARICO	<u>X</u>	_____	_____	_____

DATE: 6-11-74

Charles W. Wolschman  
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution) No. S-86-74 on the 11th day of June, 1974.

Charles W. Wolschman  
CITY CLERK

ATTEST: (SEAL)

Samuel J. Talarico  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 11th day of June, 1974, at the hour of 6:00 o'clock A. M., E.S.T.

Charles W. Wolschman  
CITY CLERK

Approved and signed by me this 12th day of June, 1974, at the hour of 2:00 o'clock P. M., E.S.T.

John A. Roca  
MAYOR

Bill No. S-74-05-44

REPORT OF THE COMMITTEE ON PUBLIC WORKS

We, your Committee on Public Works to whom was referred an Ordinance  
approving an Agreement with INDIANA VILLA CAPRI for sanitary  
sewer.

have had said Ordinance under consideration and beg leave to report back to the Common  
Council that said Ordinance DO PASS.

Winfield C. Moses, Jr - Chairman

John Nuckols - Vice-Chairman

James S. Stier

William T. Hinga

Vivian G. Schmidt

Winfield C. Moses Jr  
John Nuckols  
James S. Stier  
William T. Hinga  
Vivian G. Schmidt

DATE 6-11-74 CONCURRED IN  
CHARLES W. WESTERMAN, CITY CLERK

60-321-7 H.I.  
5/1/74

AGREEMENT FOR SANITARY SEWER

THIS AGREEMENT by and between Indiana Villa Capri, a Michigan Co-Partnership, herein referred to as "Developer", and City of Fort Wayne, an Indiana municipal corporation, herein referred to as "City",

WITNESSETH:

WHEREAS, Developer desires to construct a sanitary sewer described as follows;

A 8 inch sanitary sewer beginning at an existing sanitary manhole 5+ lineal feet west of and 5+ lineal feet south of the southwest corner of Lot 12 of South Dellwood Park; thence easterly 710+ lineal feet, terminating at a proposed manhole located 5+ lineal feet east of and 5+ lineal feet south of the southeast corner of Lot 20 of said South Dellwood Park.

in accordance with plans, specifications and profiles hereto fore submitted to the City date July 3, 1973, and approved November 28, 1973 and now on file in the Water Pollution Control Engineering Department, City Utilities, of the City of Fort Wayne, which plans, specifications and profiles are by reference incorporated herein and made a part hereof, which sewer will service, not only the land in which the Developer has an interest, but also adjoining land areas.

WHEREAS, the total cost of construction of said sewer will be the sum of \$8,800.00, pursuant to firm bids submitted and approved, which cost is composed of: \$8,000.00 for construction costs, \$400.00 for engineering services and \$400.00 for legal fees and for City Inspection fees and costs.

WHEREAS, said sewer, when completed, will service Phase II of Indiana Villa Capri owned by Developer, and will also service parts of South Dellwood Park Addition, Lots 13, 14, 15, 16, 17, 18, 19, 20, and 21, owned by others, said areas comprise a total area of 239,449 square feet, and said cost when apportioned to said total area, amounts to \$0.03675 per square foot.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows;

1. CONSTRUCTION ON SEWER

The Developer shall cause said sewer to be constructed and located in accordance with said plans, specifications and profiles, all approved by the City, under private contract to be let subject to City approval. All work and materials shall be subject to inspection by City and the right of City to halt construction if there shall be noncompliance therewith. Said

sewer shall not be deemed permanently connected into the sewer system of City until final acceptance by City. Upon completion, said sewer shall become the property of City and City shall accept sewage therefrom, subject to such sewage service charges as may now or hereafter be regularly established by City, and all further maintenance thereafter shall be borne by City.

## 2. COST OF CONSTRUCTION

The Developer agrees to pay the entire cost and expense of construction of said sewer, in cash, including City Engineering and inspection fees, and to hold the City harmless from any liability for claims connected therewith.

## 3. AREA OF DEVELOPER

Said sewer when accepted by the City, will initially serve the following described real estate of the Developer:

The North 975 feet of Phase II of Indiana Villa Capri as shown on attached plot plan, said tract being located in Adams Township, Allen County, Indiana, and described as follows;

Commencing at the Southwest corner of Section 31, Township 30 North, Range 13 East, Allen County, Indiana; thence N 1° 37' W along the West line of Section 31, a distance of 2378.70 feet to the North R/W line of Fox Point Trail also the Point of Beginning.

Beginning at the above described point; thence N 1° 37' W along the West line of Section 31, Township 30 North, Range 13 East, a distance of 295.50 feet to the South line of "South Dellwood Park" as platted in Plat Book 25, Page 90-91 of the Allen County Recorders Office; thence N 87° 49' E along the said South line of "South Dellwood Park" a distance of 750.00 feet; thence S 46° 12' E. to the South Corner of Lot #21 of said addition, a distance of 95.00 feet thence N 41° 44' E. a distance of 130.00 feet, to the East corner of Lot #21 of said addition also being the West R/W line of Chinchilla Drive; thence S 22° 24' E a distance of 248.25 feet; thence S 31° 48' W a distance of 209.85 feet to a point on the North R/W line of Fox Point Trail; thence on a curve to the Left having a radius of 228.32 feet a distance of 204.03 feet along the said North R/W line (chord bearing N 66° 31' W, chord length 197.31 feet); thence S 87° 53' W along the North R/W line of Fox Point Trail a distance of 700.00 feet to the West line of Section 31, also the point of beginning, containing 6.59 acres more or less, and subject to a Roadway Easement over the West 40.00 feet and also subject to a 14.0 foot sewer Easement as shown.

As the Developer will pay for the cost of construction of said sewer as it pertains to the above described area, no charge or assessment is made by this agreement against the above described real estate for the construction of said sewer, or the use thereof, by the present or future owners of said real estate, except only as to such standard tap-in and inspection fees and monthly sewage charges, as set forth in paragraph 5 herein, as are customarily charged by the City for connection to City sewer mains.

4. EXCESS BENEFITED AREA

Said sewer, when constructed, will also serve the following described additional or excess area, as shown on Exhibit "A", lots 13 thru 21 inclusive of South Dellwood Park Addition as recorded in Plat Book 25, Pages 90 and 91.

In the event any present or future owner of said described excess area shall at any time within fifteen (15) years after the date of this contract desire to use said sewer or any extension thereof, whether by direct tap or through the extension or connection of lateral or local lines to service such land, City, through its duly constituted authorities, before permitting such use, shall require by contract or assessment, as may be appropriate, that such owner or owners of said excess area pay to City, in addition to the cost of standard tap-in and inspection fees, the sum of \$0.03675 per square foot for the area served by each such connection and use.

All monies so collected by the City for the Developer shall be paid by the city to the Developer or his Assigness within Sixty (60) days of the receipt thereof.

5. AREA CONNECTION CHARGE

Any party connecting to the sanitary sewer described herein, shall also pay an area connection charge of Five Hundred (\$500.00) Dollars per acre served at the time of such connection. This charge is in addition to the local charge set forth in Article 4 herein, and represents the oversizing cost expended by the City in construction of the South Anthony Interceptor Sewer (Resolution #181), the Southtown Mall Lift Station (Resolution #176), and the Southtown Mall Sewer Extension (Resolution #192) which service the sewer described herein.

6. WAIVER OF RIGHT TO REMONSTRATE

The Developers, for themselves, their successors in title and assigns, waive and release any and all rights which they may now or hereafter have to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by City of any territory now or hereafter owned by them, as described in Article 3 herein, or hereafter served by said sewer or any extension thereof.

In further consideration and to induce City to execute and ratify this contract, said Developers, for themselves, their successors and assigns, agree by this contract to vest in City the permanent right at its descretion to annex to the City of Fort Wayne at any future time by duly authorized ordinance the said real estate described in Article 3 herein.

Developers further agree that any deeds, contracts, or other instruments of conveyance made by the Developers, their successors or assigns transferring or conveying any interest or title in and to any of the real estate described in Article 3 herein, shall contain the waiver and release provisions contained in this article, which provisions shall run with the land and the acceptance of the delivery of any such instrument from the Developers, their successors and assigns by any grantee, vendee, or contract purchaser, shall be made subject to the terms of this agreement and shall constitute an acceptance of the foregoing provisions by said grantee, vendee, or contract purchaser and their successors in title.

The Developers further agree to record an executed copy of this contract in the Allen County Recorder's office within ten (10) days of its adoption and approval by the Common Council of City as hereinafter provided.

Any owner or owners of land which is now, or hereafter located outside the corporate limits of City who connect into the sewer constructed hereunder shall be deemed to thereby waive his, her, their or its right to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by City of such land or of the territory in which it is located or of the area served by said sewer.

#### 7. GOVERNING STATUTE

It is the intention of the parties hereto to utilize and take advantage of and apply to this Agreement the provisions of Chapter 182 of the Acts of the State of Indiana (Burns Indiana Anno. Statute 190 suppl., Section 3938), the provisions of which Statute shall govern with respect to any matters not specifically outline herein.

#### 8. COUNCILMANIC APPROVAL

It is understood and agreed that this contract is in all respects subject to approval by the Common Council of City, by duly adopted Ordinance, and if such Ordinance is not adopted within a period of one hundred twenty (120) days after execution thereof, this contract shall be null and void and of no further force and effect.

#### 9. BOND

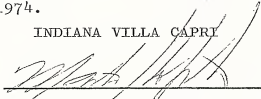
This contract is subject to Developer furnishing a bond guaranteeing said sewer against defects for a period of one (1) year from time of City of Fort Wayne acceptance.

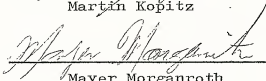
#### 10. LIMITATION ON USE

Said sewer shall be constructed for disposal of sanitary sewage only and neither the parties hereto, their successors, or assigns, nor any future owner of any land serviced by said sewer, shall at any time discharge or permit to be discharged or to flow into said sanitary sewer any water run-off caused by natural precipitation or anything other than sanitary sewage or contaminated waste.

IN WITNESS WHEREOF, the parties have subscribed to this Agreement this 5th day of February, 1974.

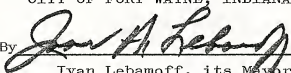
INDIANA VILLA CAPRI

  
Martin Kopitz

  
Mayer Morganroth

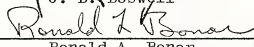
CITY OF FORT WAYNE, INDIANA,


By

  
Ivan Lebamoff, its Mayor

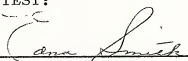
BOARD OF PUBLIC WORKS

  
J. D. Boswell

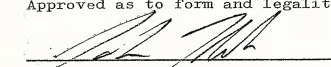
  
Ronald A. Bonar

  
William G. Williams

ATTEST:

  
Edna Smith, Clerk

Approved as to form and legality:

  
John Fleck

Associate City Attorney

Prepared by Coil Engineers, Inc.

MAY 9 1974



STATE OF MICHIGAN }  
COUNTY OF WAYNE } SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Martin Kopitz and Mayer Morganroth, of Indiana Villa Capri, A Michigan Co-Partnership, and acknowledged the execution of the foregoing Agreement to their voluntary act and deed for the purposes herein set forth.

WITNESS my hand and notarial seal.

Mary L. Allen  
Notary Public

Commission Expires:

February 6, 1976

STATE OF INDIANA: }  
COUNTY OF ALLEN } SS:

Before me, the undersigned, a Notary Public in and for the said County and State, personally appeared this 9 day of May, 1974, IVAN A. LEBAMOFF, JERRY D. BOSWELL, RONALD L. BONAR and Edna I. Smith known to me as the Mayor, the members of the Board of Works, and the Clerk of said Board, respectively, of the City of Fort Wayne, Indiana, and acknowledged the foregoing Agreement to be their voluntary act and deed as such Mayor, members of the Board of Public Works, and Clerk of said Board of the City of Fort Wayne, Indiana respectively, and the voluntary act and deed of said City.

WITNESS my hand and notarial seal.

Anne J. Fox  
Notary Public

My Commission expires:

March 6, 1976



DATE 4/4/74	DESIGN KDD	COIL ENGINEERS, INC. Civil Engineers—Land Surveyors 817 East Washington Blvd., Fort Wayne, Indiana		PHONE: 219-742-1718	SHEET OF
	CHECK CDC	JOB INDIANA VILLA CAPRI	FOR		JOB: NO.

SCHEDULE A  
SANITARY SEWER EXTENSION ALONG NORTH LINE OF  
INDIANA VILLA CAPRI APARTMENTS

LOT #	OWNER OF RECORD	SQ. FT.	SEWER CONTRIB.	AREA CONN. CHRG.	TOTAL
13	So. Dellwood Pk.	11,892	\$ 424.44	\$ 136.50	\$ 560.94
14	So. Dellwood Pk.	11,892	424.44	136.50	560.94
15	So. Dellwood Pk.	11,892	424.44	136.50	560.94
16	So. Dellwood Pk.	11,195	399.56	128.50	528.06
17	So. Dellwood Pk.	11,195	399.56	128.50	528.06
18	So. Dellwood Pk.	10,498	374.69	120.50	495.19
19	So. Dellwood Pk.	10,498	374.69	120.50	495.19
20	So. Dellwood Pk.	15,333	547.25	176.00	723.25
21	So. Dellwood Pk.	11,064	394.89	127.00	521.89
Tract A, Indiana Villa Capri		<u>141,100*</u>	<u>5,036.04</u>	<u>3,295.00*</u>	<u>8,331.04</u>
TOTALS		246,559	\$ 8,800.00	\$ 4,505.50	\$ 13,305.50

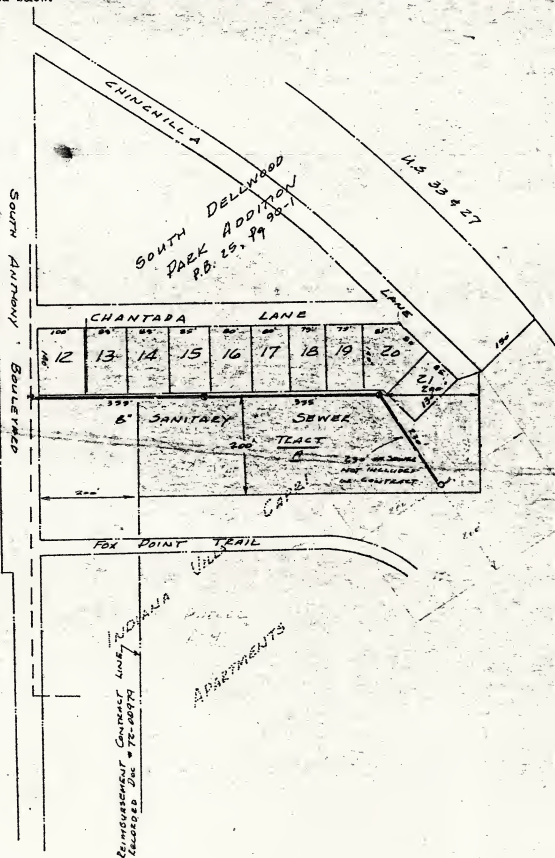
\* Sewer contribution cost is based on a 200 foot frontage along the North line of Indiana Villa Capri while the Area Connection Charge is based on the 6.59 acres included in Phase II, Indiana Villa Capri.

\*\* Construction costs divided by the contributing area produces a unit cost of \$ 0.035691 per square foot.

Area Connection Charge is \$ 500.00 per acre served. Unit charge is \$ 0.0114784 per square foot.

C. DAVID COLL, P.E., L.S.

SCALE: 1" = 200'



See attached Certificate of Survey for description of Phase II, Indiana Villa Capri, which is shown as Tract A above.

PREPARED BY:  
COIL ENGINEERS, INC.  
617 E WASHINGTON BLVD  
FORT WAYNE, INDIANA

DIGEST SHEET

D-74-05-44

TITLE OF ORDINANCE: Sanitary Sewer Agreement with Indiana Villa CapriDEPARTMENT REQUESTING ORDINANCE: Board of Public Works

SYNOPSIS OF ORDINANCE: Provides for a sanitary sewer extension outside City Limits. Total cost assumed by the Developer and will become part of City system after acceptance. Future connections to this line shall carry an area connection charge of \$500.00 payable to the City representing oversizing costs to the City for installation of the South Anthony Interceptor, Southtown Mall Lift Station and Southtown Mall Extension which services this requested extension area.

EFFECT OF PASSAGE: Future customers for Utility plus receipt of area connection charges on tap ins.

EFFECT OF NON-PASSAGE: Failure of City to provide sewage service that it is equipped to handle.

MONEY INVOLVED (Direct Costs, Expenditures, Savings): \_\_\_\_\_

No cost to City for sewer construction. Future sewage charges will be paid to City as well as area connection charges.

ASSIGNED TO COMMITTEE (J.N.): \_\_\_\_\_

Board of Works